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October 14, 1997

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***By Hand Delivery***

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

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OCT 14 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Reply Comments of The WB Television Network*  
*ET Docket No. 97-157*

Dear Mr. Caton:

Enclosed for filing please find an original and four copies of the Reply Comments of The WB Television Network in the above-referenced proceeding. The attached Engineering Statement of Pete Warren is being submitted with a faxed signature page. The original Engineering Statement will be submitted shortly.

Should you have any questions regarding this filing, please contact me at the above number.

Very truly yours,



Diane S. Hinson  
Counsel to The WB Television Network

Enclosures

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OCT 14 1997

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Reallocation of Television Channels  
60-69, the 746-806 MHz Band

ET Docket No. 97-157

**REPLY COMMENTS OF  
THE WB TELEVISION NETWORK**

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October 14, 1997

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## SUMMARY

Consistent with its public interest mandate, the Commission consistently has sought to foster the growth of new, national, over-the-air television networks. The Commission's actions in this proceeding can continue to serve that goal. Specifically, by processing and granting the applications pending for channels 60-69, the Commission will permit the construction of new television stations that will have the opportunity to become new affiliates for emerging networks such as The WB. Affiliates, after all, are the life blood of a television network. Without an adequate distribution network of primary affiliates, a new network can have the strongest programming and the most aggressive promotions, but will be unable to survive, let alone thrive. The Commission should promote, not impede, new networks' access to this crucial distribution network by processing and granting the applications pending for new television stations on channels 60-69. The WB thus opposes strenuously those commenters who advocate the dismissal of all such applications.

In order to limit the number of applications for new NTSC stations on channels 60-69, however, the Commission should first permit applicants for stations on those channels to amend their applications, where possible, to seek channels below channel 60. The WB supports the comments of those who propose such amendments because the adoption of such a proposal both will ensure that applicants for stations on channels 60-69 that can amend their applications are treated fairly and, concurrently, will free up spectrum currently allocated to channels 60-69 for other uses.

Finally, the Commission should facilitate the use of the spectrum at 746-806 MHz by reallocating 24 MHz to public safety use on a flexible basis. To this end, the Commission should modify its proposal so that it does not reallocate the same 24 MHz of

spectrum in every market. By reallocating to public safety *different* portions of the spectrum in different markets, the Commission can both comply with the congressional mandate to reallocate 24 MHz to public safety and foster the growth of new networks by granting the pending applications for channels 60-69 of potential affiliates.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554**

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In the Matter of

Reallocation of Television Channels  
60-69, the 746-806 MHz Band

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) ET Docket No. 97-157  
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**REPLY COMMENTS OF  
THE WB TELEVISION NETWORK**

The WB Television Network ("The WB") submits these Reply Comments to the notice of proposed rulemaking released by the Commission on July 10, 1997 in the above-captioned proceeding ("NPRM"). The WB respectfully submits that it can provide an important perspective in the Commission's consideration of the issues raised in this proceeding -- that of an emerging network. As the Commission considers how to reallocate the spectrum currently allocated to television channels 60-69, it should also consider the spectrum needs of emerging networks that can gain crucial new affiliates should the Commission grant the pending applications for new NTSC television stations on channels 60-69. The WB files these Reply Comments to highlight the impact that the Commission's decision will have on an emerging network like The WB.

**INTRODUCTION AND BACKGROUND**

The Commission has long espoused a commitment to foster the ability of new networks to enter and compete in the television marketplace.<sup>1</sup> Dating back to 1941, when

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<sup>1</sup> See *Report On Chain Broadcasting*, Commission Order No. 37, Docket 5060 (May 1941) at 88 ("*Report on Chain Broadcasting*"); *Amendment of Part 73 of the Commission's*

(Footnote continues on following page.)

the Commission adopted its Chain Broadcasting rules, a primary goal of the Commission has been to remove barriers that inhibit the development of new networks.<sup>2</sup> In adopting the Chain Broadcasting rules, the Commission explained that they were intended to “foster and strengthen broadcasting by opening up the field to competition. *An open door to networks will stimulate the old and encourage the new.*”<sup>3</sup>

While the mass media landscape unquestionably has changed since the Chain Broadcasting rules were adopted (and applied to the television industry in 1946), the Commission’s goal -- to “remove barriers that would inhibit the development of new networks”<sup>4</sup> -- stands no less important today. In fact, the challenge of launching a new broadcast network is even more daunting today, due to the paucity of unaffiliated television stations in many markets and the vast number of choices (including the four incumbent

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*Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d 318, 333 (1970) (“*Competition and Responsibility in Network Television Broadcasting*”); *Fox Broadcasting Co. Request for Temporary Waiver of Certain Provisions of 47 C.F.R. § 73.658*, 5 FCC Rcd 3211, 3211 and n.9 (1990) (“*Fox Broadcasting*”), (citing Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation* (Vol. 1 Oct. 1980)), *waiver extended*, 6 FCC Rcd 2622 (1991).

<sup>2</sup> *Report On Chain Broadcasting* at 88. Although the Chain Broadcasting rules were originally adopted for radio, they were applied to television in 1946. *Amendment of Part 3 of the Commission’s Rules*, 11 Fed. Reg. 33 (Jan. 1, 1946).

<sup>3</sup> *Report On Chain Broadcasting* at 88 (emphasis supplied).

<sup>4</sup> *Review of the Commission’s Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates*, 47 C.F.R. § 73.658(a), (b), (d), (e) and (g), 10 FCC Rcd 11951, 11955 (1995) (“*Network/Affiliate NPRM*”).

networks) that vie for viewers' attention. Today's new networks -- The WB and UPN -- deserve the same chance that the earlier entrants were given to compete in the free over-the-air television market.

We start by providing some background on The WB and its efforts to become a new national television network.<sup>5</sup> The WB<sup>6</sup> was launched on January 11, 1995 with two hours of prime time programming per week carried by 48 affiliated stations nationwide with an audience reach of 80 percent (including The WB's cable carriage on superstation WGN).<sup>7</sup> By the conclusion of the 1997-1998 broadcast year, The WB will be broadcasting nine hours of prime time programming on four nights and will be carried by approximately 92 affiliated stations. In addition, The WB broadcasts 19 hours of children's programming during each weekday and on the weekends.

The single most difficult impediment for The WB has been securing affiliation with a sufficient number of television stations to gain and maintain a sufficient nationwide coverage so as to place this new network in parity with the established television networks.<sup>8</sup>

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<sup>5</sup> We have provided some of this background in other rulemaking proceedings, but include it here for the benefit of the new members of the Commission. We ask the indulgence of those who have read it before.

<sup>6</sup> The WB is a limited partnership, the general partner of which is WB Communications, a division of Time Warner Entertainment Company, L.P. The other partners in The WB are Tribune Broadcasting and Jamie Kellner.

<sup>7</sup> Without WGN's cable carriage, The WB's over-the-air reach was 61 percent at launch.

<sup>8</sup> The WB's national advertisers require coverage of at least 80 percent of the country.



In some markets, The WB has experienced difficulty finding an available station for affiliation. In other markets, it has had difficulty finding sufficiently powerful stations with which to affiliate to gain market coverage. Unlike the established networks with their extensive distribution systems composed of powerful VHF stations, The WB network has only 11 VHF station affiliates, and is instead, by necessity, primarily composed of weaker UHF stations. In addition, in some markets, The WB has been forced to rely on low power stations or cable carriage. In other markets, The WB has had to enter into secondary affiliations with stations that have a primary affiliation with another network.<sup>9</sup> Together, these difficulties have impeded The WB's quest for nationwide reach.

Finding stations with which it can affiliate has been the most frustrating task for The WB because it has so little ability to affect the outcome. The other challenges of starting a new network -- *e.g.*, deciding what kind of "look" the network will have, choosing and scheduling the programming -- are all decisions over which The WB can exercise control. However, The WB cannot control (or increase) the number of available over-the-air television stations allotted to a particular market. Neither can The WB change the reality that it is, at best, the fifth or in some markets the sixth entrant. The immutable fact is that

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<sup>9</sup> Secondary affiliations are The WB's choice of last resort because the hallmark of a network is the ability to run its programming "in pattern," that is, in the order determined by the network and simultaneously (within a time zone) by all TV stations. With a secondary affiliate, the second network's programming is only aired when the affiliate has available air time, *i.e.*, when the affiliate is not broadcasting the programming of its primary affiliate. Without the ability to have its programming run in pattern, a network loses a primary defining characteristic. The WB would therefore never choose a secondary affiliation over a primary affiliation, even if the secondary station were stronger, so long as the weaker station was a full power, viable station.

almost two thirds of all television markets have only four commercial TV stations. Fewer than 20 percent of all markets have six or more commercial stations. Even then, the stations are not necessarily available to The WB for affiliation. In addition to affiliating with ABC, CBS, NBC and Fox, incumbent stations in a market frequently have already affiliated with a home shopping or religious network, thus making them unavailable to new network entrants.

Even when there is a station available for affiliation, the station tends to be the weakest station in the market. And often, even if an available station is located in a particular Designated Market Area, the station is so far removed that it may not have sufficient reach to cover the center of the population. The established networks have understandably sought affiliations with the stations with the strongest ratings and coverage areas. Thus, of The WB's 92 primary affiliations, only 11 stations are on channel 13 or lower.

The weaker coverage and market position of many of The WB's affiliates, and the correspondingly lower ratings that these stations achieve, translate directly into lower revenue for The WB, because a network's revenue is generated directly from the advertising dollars it earns. The lower the ratings, the lower the advertising rates. Although steadily growing, The WB's ratings are currently far lower than the established networks. While The WB's prime time network programs averaged a 2.6 percent rating for the season ended in May 1997,<sup>10</sup> the prime time rating of NBC, the number one network, averaged 10.5

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<sup>10</sup> Keith L. Alexander, *UPN, WB duke it out for viewers both want 'fifth network' status*, USA Today, Aug. 28, 1997, at 4B. Low ratings are not unusual for a new network.

(Footnote continues on following page.)

percent, more than four times that of The WB.<sup>11</sup> Consequently, although The WB pays established network prices for its programs as it tries to gain a competitive foothold, its revenues lag far behind those of the established networks. The average rating of The WB's affiliates during *non-network* broadcasts is lower still. As a result, promotions for The WB's network programs during the non-network broadcast hours are viewed by significantly fewer viewers than see promotions on the established networks.

The enormity of launching a new network -- both financial and otherwise -- cannot be understated. The WB has been on the air for less than three years, and continues to have a long, treacherous path to travel before earning a profit. It has been widely reported that The WB has garnered losses of up to \$219 million since it came on the air.<sup>12</sup> The press has quoted Jamie Kellner, The WB's CEO, as saying that he does not expect the network to make a profit for about another three years.<sup>13</sup>

The establishment of a new network as a profitable entity depends in large measure upon the life blood of any national network -- its primary affiliates. Accordingly, if

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UPN's rating for the same period was 3.2 percent. *Id.* Fox averaged a Nielsen rating of 3.7 for its Sunday line-up in its earlier days. Wayne Walley, *Fox Hot Upfront Despite Ratings*, Advertising Age, July 20, 1987, at 3.

<sup>11</sup> Keith L. Alexander, *UPN, WB duke it out for viewers both want 'fifth network' status*, USA Today, Aug. 28, 1997, at 4B.

<sup>12</sup> *Id.* UPN reportedly lost an estimated \$348 million during the same period. *Id.*

<sup>13</sup> Lynette Rice, Stephen McClellan, *Kellner's latest surprise: the WB gets new legs*, Broadcasting & Cable, Aug. 11, 1997, at 1.

The WB is to survive, let alone flourish, it must be allowed to compete for affiliates *now* in markets in which it has none. In certain of these markets, a number of entities that have indicated their interest in affiliating with The WB have filed applications for new NTSC television stations on channels 60-69.<sup>14</sup> Dismissal of their applications would thus work directly against the emergence of this new network competitor. To avoid such a result, the Commission should grant the pending applications on channels 60-69, after permitting those applicants to amend their applications for a channel below channel 60, thereby allowing for the construction of new television stations that can be potential affiliates of The WB (and other new networks).

**I. THE WB DISAGREES VEHEMENTLY WITH THOSE COMMENTERS WHO ADVOCATE DISMISSING ALL PENDING APPLICATIONS FOR NEW NTSC STATIONS ON CHANNELS 60-69**

In response to the Commission's query whether it should dismiss applications that are pending for new NTSC stations on channels 60-69,<sup>15</sup> a number of commenters responded that

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<sup>14</sup> There is no commitment on any parties' part to affiliate, however.

<sup>15</sup> NPRM at ¶ 22. The Commission also asks whether, in lieu of dismissing all applications pending for channels in 60-69, it should dismiss only those applications that implicate the 1987 freeze. *Id.* The WB notes that following the Commission's resolution of the pending petitions for reconsideration of its digital television ("DTV") allotment order, there will be no further need for the 1987 freeze. As the Commission is well aware, the 1987 freeze was adopted to keep broadcast spectrum available for the eventual transition from NTSC to DTV broadcasting. *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, 1987 FCC LEXIS 3477 (July 17, 1987), 52 Fed. Reg. 28346 (1987). Once the Commission has adopted a DTV table of allotments and resolved the pending petitions regarding those allotments, the spectrum needs for DTV will be finalized. At that time, there should be no further need for the 1987 freeze that was designed to provide for these spectrum needs.

the public interest would be best served by adopting such a proposal.<sup>16</sup> The WB vehemently opposes such a proposal and disagrees with those commenters. Far from serving the public interest, dismissing the pending applications for channels 60-69 would harm the public interest by further hampering the efforts of new networks to establish themselves as viable competitors in the free over-the-air television marketplace.<sup>17</sup>

The Commission has remained steadfast in its goal of nurturing new networks. The history of the Commission's Financial Interest and Syndication Rule ("FinSyn") is a case in point. Even as the Commission's view on the need for and content of the regulation has changed over the last 25 years, the Commission has not wavered from the goal of nurturing new networks. In 1970, when it first adopted the rule, the Commission noted that "[e]ncouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of this Commission."<sup>18</sup> More than two decades later, when the Commission took action first to relax and later to eliminate the FinSyn rule, it did so at the behest of the then newest network entrant, Fox. Indeed, pending its review of the rule, the Commission granted Fox's request for a limited

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<sup>16</sup> See, e.g., Comments of Motorola at 15; Comments of the Association of Public-Safety Communications Officials-International, Inc. at 7.

<sup>17</sup> See Joint Comments of United Television, Inc. and John C. Siegel at 5 (recognizing that the limited number of television stations in some markets for which the joint commenters applied "adversely affected the ability of emerging networks to maximize their national coverage and thereby compete against the established networks").

<sup>18</sup> *Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d at 333.

waiver of the rule.<sup>19</sup> In 1995, in deciding to phase out the rule entirely, the Commission similarly evaluated the rule's impact on "[t]he overall business practices of emerging networks, such as Fox, in the network television and syndication business . . . [and] [t]he growth of additional networks, including the development of Fox and its position vis-à-vis the three major networks."<sup>20</sup>

Appropriately, the Commission's goal of fostering new networks has not been limited to Fox. Before the Fox network even existed, when the Commission first expanded its multiple ownership rule, it did so with the stated hope of fostering new networks.<sup>21</sup> In addition, the Commission has crafted rules and granted a variety of waivers designed to foster the development of a variety of new networks over the years. In 1967, for example, the Commission granted a waiver of the dual network rule to ABC -- the then new network entrant -- in connection with ABC's four new specialized radio networks. Although operation of the four networks violated the dual network rule, the Commission nevertheless concluded that waiver of the rule was appropriate because ABC's proposal "merits encouragement as a

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<sup>19</sup> *Fox Broadcasting*, 5 FCC Rcd at 3211.

<sup>20</sup> *Review of the Syndication and Financial Interest Rules, Sections 73.659-73.663 of the Commission's Rules*, 10 FCC Rcd 12165, 12169-70 (1995).

<sup>21</sup> *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, 100 FCC 2d 17, 45 (1984) ("*Multiple Ownership*") (relaxing restrictions on multiple ownership advances "Commission's diversity goal by providing alternatives to the three television networks") *aff'd and modified*, 100 FCC 2d 74 (1985). Although Fox was the first of these alternatives, there has never been, nor should there be, any notion that one alternative was all that was needed.

new and imaginative approach to networking.”<sup>22</sup> The Commission explained that it was “of more than usual importance to encourage to the extent possible innovation and experimentation in the operation of . . . networks.”<sup>23</sup> In 1981, the Christian Broadcasting Network was granted a limited waiver of both the prime time access and the FinSyn rules.<sup>24</sup> The Commission reasoned that a waiver was appropriate because the rules were adopted in part to “attempt to ensure the development and growth of other ‘lesser’ [network] organizations. . . .”<sup>25</sup> The Commission followed the same line of reasoning in subsequently granting Home Shopping Network waivers of the dual network and prime time access rules. The Commission noted, for example, that simultaneous operation of two Home Shopping networks was “consistent with the Commission’s goals of encouraging alternatives to traditional networking.”<sup>26</sup>

Most recently, the Commission expressed its continued interest in fostering new networks in proposing to amend various network/affiliate rules. Sprinkled throughout the notice of proposed rulemaking are questions about the impact that the proposed changes could

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<sup>22</sup> *Proposal of American Broadcasting Cos., Inc., to Establish Four New Specialized “American Radio Networks,”* 11 FCC 2d 163, 168 (1967).

<sup>23</sup> *Id.* at 165.

<sup>24</sup> *Request of the Christian Broadcasting Network, Inc. for Waiver of Section 73.658(j)(4) of the Commission’s Rules,* 87 FCC 2d 1076, 1078 (1981).

<sup>25</sup> *Applicability of 47 C.F.R. § 73.658(g) and 47 C.F.R. § 73.658(k) to Home Shopping, Inc.,* 4 FCC Rcd 2422, 2424 (1989) (“*Home Shopping*”) (citing *Christian Broadcasting Co., Inc.*, 87 FCC 2d at 1077).

<sup>26</sup> *Home Shopping*, 4 FCC Rcd at 2423.

have on the latest entrants, The WB and UPN.<sup>27</sup> For example, the Commission queried whether its prohibition on time optioning “might inhibit the growth of new networks.”<sup>28</sup> Likewise, in considering whether to eliminate its prohibition on exclusive affiliation, the Commission expressed its concern “that permitting exclusive affiliation in smaller markets might preclude the development of new networks in those markets, thus depriving the public of the benefits of competition and diversity.”<sup>29</sup>

In all those proceedings, the Commission’s laudable interest in helping, not harming, new networks is clear. This rulemaking proceeding is hardly the place to abandon that goal. Although the Commission has noted that it is not the FCC’s function to assure competitive equality in any given market, it has acknowledged its “duty at least to take such actions as will create greater opportunities for more effective competition among the networks in major markets.”<sup>30</sup> Processing and granting the pending applications on channels 60-69 will provide applicants with the opportunity to build new stations with which The WB, or another

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<sup>27</sup> *Network/Affiliate NPRM*, 10 FCC Rcd at 11964-65.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 11967.

<sup>30</sup> *Television Broadcasters, Inc.*, 4 RR 2d 119, 123 (1965) (Commission granted a short-spacing waiver to an ABC affiliate based largely upon its finding that the station had inferior facilities compared to those available to the other national networks in the market, which resulted in a “serious competitive imbalance”), *recon. granted in part on other grounds*, 5 RR 2d 155 (1965). *See also Peninsula Broadcasting Corporation*, 3 RR 2d 243 (1964) (same); *New Orleans Television Corp.*, 23 RR 1113 (1962) (short-spacing waiver granted for the purpose of assuring the existence of a third truly competitive station in the market, thereby making available competitive facilities to the networks).



emerging network, can develop a primary affiliation.<sup>31</sup> Whether it is The WB or some other new network that gains an affiliate and thereby strengthens its efforts to obtain a stronghold, the public benefits. Quite simply, therefore, the processing and granting of the applications pending for stations on channels 60-69 will further the significant public interest objective of encouraging the emergence of a new national network or networks.

## **II. THE WB SUPPORTS THOSE COMMENTERS WHO URGE THE COMMISSION TO PERMIT APPLICANTS FOR STATIONS ON CHANNELS 60-69 TO AMEND THEIR APPLICATIONS TO SUBSTITUTE AN ALTERNATE CHANNEL BELOW CHANNEL 60**

The WB supports those commenters who are in favor of the Commission's proposal to afford applicants for stations on channels 60-69 an opportunity to amend their applications or petitions for rulemaking to obtain a channel below channel 60.<sup>32</sup> As some commenters have recognized, it would be inequitable for the Commission to dismiss the timely filed pending applications after practically inviting the filing of such applications in the Sixth Further Notice of Proposed Rulemaking in the DTV proceeding.<sup>33</sup> As those commenters appropriately recognized, applicants for stations on channels 60-69 invested

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<sup>31</sup> The WB acknowledges that as part of the Commission's DTV plan, any new stations granted on channels 60-69 would be required to return their spectrum at the end of the DTV transition period. NPRM at ¶ 22. Of course, The WB does not expect the Commission to alter its DTV plans. The WB hopes, however, that at the end of the DTV transition period, licensees with stations on channels 60-69 will be afforded an opportunity to relocate their stations to a channel position within the core spectrum.

<sup>32</sup> See, e.g., Joint Comments of United Television, Inc. and John C. Siegel at 2; Comments of Winstar Broadcasting Corp. at 3; Comments of Stead Communications at 2.

<sup>33</sup> *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 11 FCC Rcd 10968 at 10992-93 (1996).

substantial time and resources in the filing of their applications.<sup>34</sup> Basic equity and fairness should guide the Commission's decision to consider these applications.

One way for the Commission to minimize the number of new NTSC stations that are authorized on channels 60-69, however, would be to allow the pending applicants an opportunity to amend their applications to seek a channel below channel 60, if possible.<sup>35</sup> The adoption of such a proposal, unlike the Commission's proposal to dismiss all pending applications for stations on channels 60-69, will not penalize those applicants who can amend their applications to channels below channel 60. In addition, it will free up spectrum currently allotted to channels 60-69 for other uses. The WB thus supports this proposal.

### **III. THE WB URGES THE COMMISSION TO ADOPT A FLEXIBLE APPROACH TO REALLOCATING 24 MHz TO PUBLIC SAFETY USE ON CHANNELS 60-69**

To further its goal of fostering new networks, The WB urges the Commission to adopt a flexible approach to reallocating 24 MHz of spectrum contained within channels 60-69 to public safety use. Currently, the Commission proposes to reallocate in every market the same two blocks of spectrum, 764-776 MHz and 794-806 MHz, to public safety use.<sup>36</sup> As discussed more fully in the attached Engineering Statement of Professional Consulting

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<sup>34</sup> Comments of KM Communications, Inc. at 7; Comments of Stead Communications at 4-5.

<sup>35</sup> In addition, as discussed more fully in the attached Engineering Statement, the Commission should waive its existing spacing rules where necessary to permit an applicant to seek a channel below 60.

<sup>36</sup> NPRM at ¶ 11.

Engineer Pete E. Myrl Warren, however, such a rigid allocation unnecessarily limits the ability to employ the spectrum at 746-806 MHz for other uses, including NTSC channels.

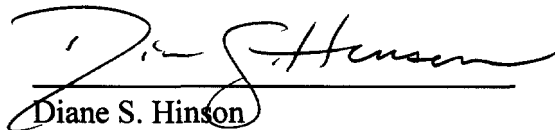
The WB urges The Commission to adopt instead a flexible reallocation plan for the 24 MHz of spectrum allocated to public safety use. As explained by Mr. Warren, by reallocating to public safety *different* portions of the spectrum in different markets, the Commission would enable itself to further two important goals concurrently: (1) complying with the congressional mandate to reallocate 24 MHz to public safety, and (2) fostering the growth of new networks by accommodating (and granting) the pending applications for channels 60-69 of potential affiliates. Simply stated, a more flexible approach will prevent the Commission from being forced to choose between these two laudable goals. Rather, such an approach will allow the Commission to foster both goals concurrently.

### **CONCLUSION**

For all of the reasons stated above and in the accompanying Engineering Statement, The WB opposes the dismissal of all pending applications for channels 60-69. Instead, The WB urges the Commission to process and grant those applications expeditiously, after permitting applicants to amend their applications to seek a channel below channel 60. Concurrently, The WB urges the Commission to adopt a more flexible approach to its

reallocation of spectrum to public safety, thereby permitting it both to fulfill its congressional mandate to provide spectrum for public safety use and to further the Commission's long-standing goal of fostering new networks.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Diane S. Hinson", written over a horizontal line.

Diane S. Hinson

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Counsel for The WB Television Network

October 14, 1997

## ENGINEERING STATEMENT

Due to the Commission's UHF "taboos," only two NTSC stations operating on channels 60-69 are generally permitted in most communities.<sup>1</sup> Currently, there are 41 applications pending for construction permits for new NTSC television stations to operate on channels 60-69. If these applications are granted, 29 of the specified communities and metropolitan areas in which these applications are filed will have only one NTSC allotment and no DTV allotment on channels 60-69. Eleven of the specified communities and metropolitan areas in which other applications are filed will have two NTSC allotments and no DTV allotment if these applications are granted.<sup>2</sup> Thus, if the pending applications for new NTSC stations on channels 60-69 were the Commission's only consideration, there is sufficient spectrum in the 746-806 MHz band to accommodate each of these applications. Moreover, there is still 24 MHz of spectrum for public safety services available for reallocation as demonstrated below.

In its *Notice of Proposed Rule Making*, FCC 97-245 (released July 10, 1997) ("*NPRM*"), the Commission proposed to reallocate the same two blocks of spectrum -- 764-776 MHz and 794-806 MHz -- for public safety use in every market. *Id.* at ¶11. This rigid reallocation

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<sup>1</sup> Among other restrictions, the UHF taboos require a separation of 87.7 kilometers between adjacent channels, and 31.4 kilometers between second, third, fourth and fifth-adjacent channels. See 47 C.F.R. §73.698.

<sup>2</sup> Attached to this statement is an appendix containing a list of the communities of license specified in 40 of the applications. The remaining application is for a noncommercial educational facility to operate on Channel 62 in San Juan, Puerto Rico. Although there already are three (3) NTSC stations on channels 60-69 and 7 DTV allotments for those channels in Puerto Rico, the stations should not interfere with one another due to Puerto Rico's unusual terrain.

proposal, however, would unnecessarily restrict the use of the 746-806 MHz spectrum. The Commission should, instead, adopt a flexible reallocation plan for the 24 MHz for public safety use by reallocating different portions of the 746-806 MHz spectrum according to the specific needs of each metropolitan area. By permitting such a flexible reallocation, the Commission will comply with its statutory mandate<sup>3</sup> of reallocating 24 MHz of spectrum for public safety services, and, at the same time, will accommodate each of the pending applications for new NTSC stations on channels 60-69 until the DTV transition period is completed. After the existing NTSC stations have converted to DTV and have returned their second channel, there should be sufficient spectrum available to permit those stations operating on channels 60-69 to move to a channel below Channel 60 and convert to DTV.<sup>4</sup>

The adoption of a flexible reallocation plan also will permit the Commission to achieve greater efficiency in the use of the 746-806 MHz spectrum through the ability of NTSC television stations and public safety services to operate on adjacent channels. It is well established, for example, that NTSC stations operating on Channel 14 with one megawatt or

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<sup>3</sup> Section 337 of the Communications Act, as added by Section 3004 of the Balanced Budget Act of 1997, requires the Commission to allocate 24 MHz of spectrum (between 746 MHz and 806 MHz) for public safety services no later than January 1, 1998. 47 U.S.C. §337(a)(1).

<sup>4</sup> As demonstrated by the maps contained in Appendix B to the *NPRM*, the only cities in which there is not sufficient spectrum available for reallocation to licensees of public safety services are New York, Philadelphia, San Francisco, Sacramento, Los Angeles, and the island of Puerto Rico. The Commission could help alleviate the spectrum shortage in these areas (as well as others) by making an additional 6 MHz of spectrum immediately available on either Channel 14, 15, or 16, which would provide interoperability in the UHF band, as has been suggested by many public safety licensees. See, e.g., Comments of National League of Cities, *et al.*

more of power can operate from the same location with land mobile services using the 6 MHz of spectrum immediately below Channel 14. This adjacent channel operation is achieved through the use of enhanced filtering, which eliminates out-of-band signals on the lower side-band. The filtering of upper side-band emissions is easier, less expensive, and would permit land mobile use of upper-adjacent channels. If the Commission were to adopt a flexible reallocation plan and require cooperation between NTSC stations and public safety licensees, it would greatly enhance the efficient use of spectrum by permitting adjacent-channel (above and below) operation between public safety services and NTSC stations in the 746-806 MHz spectrum block.<sup>5</sup> Therefore, in those rare instances where an adjacent-channel NTSC/land mobile operation may be required, the NTSC allotment should be permitted based on the demonstrated co-existence of such adjacent-channel operations.

The Commission could further accommodate both the reallocation of spectrum for public safety use and the applications for new NTSC stations on channels 60-69 by permitting applicants to amend their applications and petition to substitute a suitable, alternative channel below Channel 60. In those markets where an alternative channel is not readily available, the Commission should waive its existing spacing rules to the extent necessary to permit applicants to move to a channel below Channel 60 where the applicant demonstrates that there would be no actual interference to other stations or services. Although permitting applicants to move to a

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<sup>5</sup> Adjacent channel operation between a land mobile station and a DTV station operating with one megawatt of power may not be possible. However, such adjacent-channel operation is possible where the DTV facility operates with 100 kilowatts of power or less. See Comments of Tribune Broadcasting, Technical Statement of Charles W. Rhodes.

lower channel may, in some instances, subject the applicant itself to a minor amount of interference, the Commission should nevertheless waive its separation provisions so long as the proposed station will not cause actual interference to other stations or services, and would bring an additional service to a significant area and population.

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Dated: 10-14-97



## APPENDIX

The 29 communities that will have only one NTSC allotment and no DTV allotments if the pending applications are granted are as follows:

- |                       |                        |
|-----------------------|------------------------|
| 1. Dothan, AL         | 16. Destin, FL         |
| 2. Roanoke, VA        | 17. Tullahoma, TN      |
| 3. Sebring, FL        | 18. Defiance, OH       |
| 4. Saranac Lake, NY   | 19. Springfield, IL    |
| 5. Rochester, NY      | 20. Fairmont, WV       |
| 6. Gainesville, FL    | 21. Galesburg, IL      |
| 7. Mobile, AL         | 22. High Point, NC     |
| 8. Presque Isle, ME   | 23. Ilion, NY          |
| 9. Hammond, LA        | 24. Olympia, WA        |
| 10. Lexington, KY     | 25. Danville, IL       |
| 11. Seattle, WA       | 26. Des Moines, IA     |
| 12. Cairo, GA         | 27. Fredericksburg, VA |
| 13. Richmond, VA      | 28. Paintsville, KY    |
| 14. Hollidaysburg, PA | 29. Geistown, PA       |
| 15. Elizabethton, TN  |                        |

The 11 communities that will have two NTSC allotments and no DTV allotments if the pending applications are granted are as follows:

- |                        |                     |
|------------------------|---------------------|
| 1. Mililani Town, HI   | 7. Broken Arrow, OK |
| 2. Bay City, MI        | 8. Memphis, TN      |
| 3. Arcade, NY          | 9. Chandler, AZ     |
| 4. Tulsa, OK           | 10. Kansas City, MO |
| 5. Palatka, FL         | 11. Bartlett, TN    |
| 6. Charlottesville, VA |                     |